

vourable, there being no less than 30 years since the building of the said manse, and that if he was not paid, it was more just that he being *in mora et supina negligentia*, should pursue the former heritor or his successor, than a singular successor who was no ways obliged.

No 9.

Gosford, MS. No 874. p. 555.

* * A similar decision was pronounced, 2d February 1672, Guthrie against Laird of Mackerston, No 74. p. 10137, *voce* PERICULUM.

1687. December 3. EARL OF SOUTHESK *against* MAXWELL.

No 10.

THE Earl of Southesk pursuing Maxwell of Hills for a dry multure, payable out of his lands to a mill belonging to Southesk in Annandale, which he had appraised for cautionry, he declared on oath, that he had possessed only 12 years, and had left it in the tenant's hands; yet the LORDS advising this oath, found it *debitum fundi*, and decerned against him.

Fol. Dic. v. 2. p. 62. Fountainball, v. 1. p. 487.

1694.

Mr JAMES MOIR, Minister at Frasersburgh, *against* LORD SALTON, LAIRD OF TECHMUIRY, and his Other Parishioners.

No 11.

THE LORDS found, that the expense bestowed by the minister in repairing his manse was not *debitum fundi*, and affected none but the heritors and possessors at that time, and not singular successors, as was found, Mr Lawrence Charteris, No 5. p. 10165.; and found his right to foggage and grass was an annual prestation that could far less descend to singular successors; but demurred a little if my Lord Salton could be reputed one, seeing he had bought in the rights on his grandfather Philorth's estate.

Fol. Dic. v. 2. p. 62. Fountainball, v. 1. p. 601.

1724. July 22.

Colonel JOHN ERSKINE of Carnock *against* CHARLES BELL Writer to the Signet.

No 12.

MR SCOT Sheriff-clerk of Edinburgh, in his contract of marriage with Marion Cuninghame, became obliged to employ 10,000 merks on good security to her in liferent, and to the children of the marriage in fee; and for their farther

Arrears of a widow's jointure are a real burden on her husband's estate.